

No. 33091 – *Daniel S. Strahin v. Earl Sullivan and Farmers & Mechanics Mutual Insurance Company*

Albright, J., dissenting:

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While this Court retains the power to accommodate and even encourage the growth and development of the common law in appropriate cases where the Legislature has not spoken,¹ the Court has historically done so only where “necessary to meet society’s changing needs” in order to promote justice and the public good. *Morningstar v. Black & Decker Mfg. Co.*, 162 W.Va. 857, 874, 253 S.E.2d 666, 676 (1979).

In this case the majority has acted to alter the common law in derogation of the sound principles of the law which encourage the settlement of claims and the avoidance of vexatious and expensive litigation. *See e.g.*, Syl. Pt. 1, *Sanders v. Roselawn Memorial Gardens, Inc.*, 152 W.Va. 91, 159 S.E.2d 784 (1968); *Horace Mann Insurance Co. v. Adkins*, 215 W.Va. 297, 599 S.E.2d 720 (2004). What other reason would Mr. Strahin have for negotiating the assignment and covenant not to sue with Mr. Sullivan in this case if not to encourage the parties and their insurers to settle the claim without further litigation? The majority opinion completely ignores the incentive value such agreements have had in promoting settlement and thus serves to promote protracted litigation. This result is counter

¹*See e.g. Mallet v. Pickens*, 206 W. Va. 145, 522 S.E.2d 436 (1999).

to sound public policy and encourages the continuation of litigation out of fear that an early resolution of one party's claim may prevent the timely resolution of it and other claims related to it.

With such result being clearly antithetical to the public good, I respectfully dissent.